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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 282

THOMAS W. REED,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

(ON APPEAL FROM THE SUPREME COURT OF ILLINOIS)

MOTION TO DISMISS.

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The People of the State of Illinois, appellee herein, by William G. Clark, Attorney General of the State of Illinois, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move to dismiss the appeal on the ground that said appeal does not present a substantial federal question.

ARGUMENT.

I.

SECTION 19-1 (a) OF THE CRIMINAL CODE OF ILLINOIS IS NOT UNCONSTITUTIONALLY VAGUE, NEITHER PER SE NOR AS IT APPLIES TO APPELLANT, SINCE IT DEFINES THE OFFENSE OF BURGLARY IN WORDS WHICH ARE REASONABLY UNDERSTANDABLE TO A PERSON OF ORDINARY INTELLIGENCE.

Appellant's primary contention is that the statutory provision concerning the offense of burglary (Ill. Rev. Stat. 1965, ch. 38, par. 19-1 (a)) is so vague and indefinite as to make it unconstitutional *per se,* and as applied to the conduct charged in the indictment under which appellant was convicted.

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has been recognized by this Court. As was said in *United States* v. *Harriss,* 347 U. S. 612,

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed,"

Thus this Court has struck down a state criminal statute under the Due Process Clause where it was not sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. *Connally* v. *General Const. Co.,* 269 U.S. 385. No one may be required at peril of life, liberty or property to specu-

late as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbinds. *Lanzetta* v. *New Jersey*, 306 U.S. 451.

In the *Connally* and *Lanzetta* cases the uncertainty as to the statute's prohibition resulted from vague or overbroad language in the newly enacted statute itself, and the Court concluded that the statute was "void for vagueness."

The instant case is distinguishable. At common law the offense of burglary was the breaking and entering of the dwelling house of another in the nighttime with intent to commit a felony therein. By statute, Illinois has modified the offense so that the elements of "breaking", "dwelling house" and "nighttime" are no longer required. Appellant contends however that the words "without authority" and "theft" as they appear in section 19-1 (a) are so difficult of comprehension that they could not be reasonably understood by a man of ordinary intelligence without further definition. The Illinois Supreme Court, quoting *United States* v. *Harriss*, 347 U.S. 612, did not agree (*People* v. *Reed*, 33 Ill. 2d 535, 538), and we submit, that determination was proper.

Where the words assailed, taken in connection with the context, are commonly understood, their use does not render a statute invalid. Nor does the legislature have to define words in common and daily use. All that is required, we submit, is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices, *i.e.*, that the legislature give fair warning in language that the common world will understand what the law intends to do if a certain line is passed.

The text of the assailed statute reads as follows:

> **19-1.** § 19-1. **Burglary.**] (a) A person commits burglary when without authority he knowingly enters into, or without authority remains within a building, housetrailer, watercraft, aircraft, railroad car, or any part thereof, with intent to commit therein a felony or theft.

Although it is not likely that a criminal will carefully consider the text of the law before he commits the offense of burglary, yet the text of Illinois Revised Statute 1965, ch. 38, par. 19-1 (a), if he had considered it would have, we submit, advised him that his proposed conduct was forbidden, *i.e.*, that if he entered that store without authority, with the intent to commit a theft or felony therein, he would violate the law. There is, no necessity to guess at the meaning of this statute in order to determine what conduct it makes criminal and, therefore the statute is not unconstitutionally vague.

Finally, it follows that, if the statute itself is sufficiently definite and explicit, an indictment based thereon, as fully descriptive of the offense as the language of the statute itself, will also be as sufficiently definite and explicit as due process requires.

II.

THE INDICTMENT HEREIN WAS CONSTITUTIONALLY SUFFICIENT AND THE FAILURE TO ALLEGE THE STREET ADDRESS WAS MERELY A FORMAL, NON-JURISDICTIONAL DEFECT WHICH WAS WAIVED BY APPELLANT'S PLEA OF GUILTY.

The ground rules for testing the sufficiency of an indictment are twofold: (1) Does the indictment adequately inform the defendant of the nature of the charge he will

have to meet; (2) If the defendant is acquitted or convicted, and later prosecuted again, will a court under what has been charged, be able to determine the extent to which the defense of double jeopardy is available? *United States* v. *Debrow,* 346 U. S. 374; *Russell* v. *United States,* 369 U. S. 749.

The failure to give a specific address for the store building of Charles Black doing business as City Television in the County of Champaign and State of Illinois does not, we submit, fail to meet this test of constitutional sufficiency. The record discloses that appellant entered a plea of guilty and was fully aware of the exact nature of the charge against him. If he is again accused of the same charge, on a plea of double jeopardy he has the right to introduce the record or parole evidence to establish this defense. *People* v. *Jankowski,* 391 Ill. 298; *People* v. *Brady,* 272 Ill. 401.

The indictment herein stated all the material facts and circumstances embraced in the statutory definition of the offense and clearly left no doubt in the mind of the accused and the court of the exact offense intended to be charged.

Finally, we submit that the failure to specify the street address was merely a *formal* defect, and was therefore waived by appellant's plea of guilty.

Prior to the enactment of the Code of Criminal Procedure in 1963, the Illinois Criminal Code provided that the time and place of committing a crime should be stated "with reasonable certainty" (Ill. Rev. Stat. 1961, ch. 38, par. 716). Dating back to 1827 there was a statute in Illinois which directed that all exceptions which go merely to the *form* of an indictment shall be made before trial

(Ill. Rev. Stat. 1961, ch. 38, par. 719). No specifications were set forth by which the courts were to be guided in deciding what were merely matters of form, and until recently there was apparently no direct route for decision. Where an indictment was quashed the order could not be appealed, and when it was not, the defendant would plead and thereby waive his exceptions to the form of the indictment. The only decision on point was *People* v. *Williams*, 30 Ill. 2d 125, upon which appellant relies. That case was reviewed on the recently authorized writ of error on behalf of the People after an order quashing the indictment for failure to state the street address of an attempted burglary of a factory building. The order was affirmed, the ground being a part of the body of *technical* defects *in form* which had come to be recognized as reachable by motion to quash. Also it can be observed that the court in *Williams* took judicial notice that Cook County has an area of 954 square miles, a population in excess of 5,000,000 and contains hundreds of factory buildings.

The holding in the *Williams* case was rendered obsolete by the 1963 Code of Criminal procedure. Section 719, referring vaguely to defects in form, was repealed and replaced by specific sections delineating various lines of attack on an indictment (Ill. Rev. Stat. 1965, ch. 38, pars. 111-3, 111-5). However, because of the difference in the language in the new Code of Criminal Procedure setting forth the form of the charge, the cases decided under the former Code (including *Williams*) are not necessarily conclusive. The problem is one of statutory construction and no constitutional issue is presented, for if an indictment under the former Code, alleging only the county where the offense occurred was constitutionally sufficient, the Constitution requires no more by reason of the change in the statute.

The Illinois Supreme Court recognized in *People* v. *Reed,* 33 Ill. 2d 535, 539, and *People* v. *Blanchett,* 33 Ill. 2d 527, that this failure to allege the street address was not jurisdictional and hence, we submit, that the overruling of the *Williams* case was gratuitous. This observation is corroborated by the language in *People* v. *Darrah,* 33 Ill. 2d 175, at 183, a case identical to this:

> "The indictment charged that on November 29, 1961, within the county of Rock Island, Illinois, the defendant and Duncan broke and entered "the building, to-wit: store building, of John A. Gustafson, doing business as Gustafson's Clothiers." The defendant contends the indictment is fatally defective because it fails to give the street address or a more particular description of the burglarized building. We do not reach this issue because the defendant's plea of guilty waived all defects in the indictment which were not jurisdictional and an inadequate description of a particular location within a county is not a jurisdictional defect. *People* v. *Jackson,* 23 Ill. 2d 475."

CONCLUSION.

We respectfully submit therefore that appellant presents no substantial federal question for the decision of this Court and that this appeal should be dismiss[redacted]

Respectfully submitted,

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